

Hazardous Waste Generator Improvements Rule



West of Sidney, NE

Contents

- History of the Rule
- Context: Generator Universe
- Goals of the New Regulations
- Major Regulation Provisions
 - Reorganization
 - Consolidation of CESQG Waste at LQGs
 - Episodic Generation
 - Emergency Planning and Preparedness
 - Hazardous Waste Determinations
 - Labeling
 - Reporting
 - Satellite Accumulation Areas
 - Waiver to 50-foot Requirement
 - Closure
 - Additional Clarifications

- Note: This slide presentation is provided by the EPA for the convenience of the regulated community. It is not a regulation, nor can it be considered a substitute for the actual regulations, themselves, or for related laws and applicable court decisions.

History of the Rule

- Most generator rules were promulgated in the 1980s; >30 years old
- In 2004, ORCR conducted an evaluation of the generator program to improve program effectiveness, reduce compliance costs, and foster an improved relationship with states and the regulated community
- ORCR published an ANPRM on April 22, 2004, and held four public meetings soliciting comment on generator program effectiveness
- ORCR received over 500 comments from 55 organizations and individuals, including 9 states, 5 federal agencies, 2 universities, 12 trade associations, and 22 companies
- Comments included: simplify the regulations, eliminate cross-referencing, codify guidance, provide flexibility for episodic generators, require re-notification for SQGs, provide one page basic information for contingency planning, clarify ambiguities, clarify satellite accumulation

History of the Rule

- After 2004, ORCR took a number of non-regulatory actions to respond to public comments and to improve the generator program:
 - Improved user-friendliness of generator website
 - Developed online guide to the “Hazardous Waste Generator Regulations”
 - Released “Closed Container” guidance
 - Issued memo for turnover of hazardous waste in tanks
 - Issued a Technical Corrections (direct final) rule
- ORCR also engaged in further program evaluation
 - 2012 Hazardous Waste Determination Program Evaluation
 - 2014 Retail NODA OMB Retrospective Review
- Proposed regulation published September 25, 2015
 - Thousands of comments received and reviewed
- New regulations grew out of all of these evaluations

Public Comment on the Proposed Rule

- Over 230 public comments were received on the Generator Improvements Proposed Rule
- The commenters included:
 - 25 states
 - 10 local governments
 - More than 50 from academic institutions
 - About a dozen from the energy sector/utilities
 - More than 25 from industry and related trade associations
 - 10 from the waste management industry
- Comments covered all aspects of the rule, particularly waste determinations and marking and labeling; independent requirements and conditions for exclusion; VSQG consolidation; and episodic generation

Rule Process & Schedule

- Rule signed on October 28, 2016
- Publication in Federal Register expected by mid-November
- Effective Date – 6 months from publication
- Rule goes into effect in IA, AK, the territories, and tribal lands on the effective date
- Authorized states run the RCRA program in their state and thus, will go through the state adoption & authorization process for this new RCRA rule
 - Authorized states will have to pick up the more stringent provisions, typically by July 1, 2018 (or July 1, 2019 if state law change is needed)
 - Authorized states can choose to pick up the less stringent provisions and those provisions that are considered equally stringent

Context

Size of Generator Universe

Generator Status	Number of Facilities	Total HW Generated (tons)	Number of Facilities in Iowa	Total HW Generated in Iowa (tons)	Percent of Total Hazardous Waste Generated
CESQG (VSQG)	353,400–591,800	46,000–148,000	3718	166	<1%
SQG	49,900–64,300	66,000–141,000	928	427	<1%
LQG	20,800	35.2 million	175	51,097	99%
Total	353,300–544,300	34.7–34.8 million	198	51,690	100%

* Numbers of VSQGs and SQGs are estimates based on Biennial Report (BR) and limited state data. National LQG number is derived from 2013 BR, Iowa from 2013 BR.

Goals of the New Regulations

The HW Generator Improvements Rule:

1. Reorganizes the regulations to make them more user-friendly and thus enable improved compliance by the regulated community
2. Provides greater flexibility for hazardous waste generators to manage waste in a cost-effective manner
3. Strengthens environmental protection by addressing identified gaps in the regulations
4. Clarifies certain components of the hazardous waste generator program to address ambiguities and foster improved compliance

Reorganization of Generator Regulations

Provision	Previous Citation	New Citation
Generator Category Determination	§ 261.5(c)–(e)	§ 262.13
CESQG (VSQG) Provisions	§ 261.5(a), (b), (f)–(g)	§ 262.14
Satellite Accumulation Area Provisions	§ 262.34(c)	§ 262.15
SQG Provisions	§ 262.34(d)–(f)	§ 262.16
LQG Provisions	§ 262.34(a), (b), (g)–(i), (m)	§ 262.17
Episodic Events	None	Subpart L, § 262.230-234
Preparedness, Prevention, and Emergency Procedures for LQG	§ 265.30-56	Subpart M, § 262.250-265

As part of this reorganization, the Agency made conforming changes to citations that reference § 261.5 and § 262.34

CESQG Name Change

Conditionally Exempt Small Quantity Generators
become
Very Small Quantity Generators

- Former rules at 262.34 and new rules are not requirements that generators must meet.
- These rules are conditional exemptions from permitting for generators if they meet the requirements.
- Legal citation for a generator violation is “Failure to Obtain a Permit.”

CESQG Name Change to VSQG

- 262.10(a)(2) defines a generator that accumulates hazardous waste on site as a facility that stores hazardous waste unless it meets the “conditions for exemption” for a VSQG, SQG, or LQG. Storage requires a permit.
- Regulations explain difference between conditional exemptions and independent requirements such as hazardous waste determinations and manifesting.

VSQG Waste Consolidation

Enhancing Generator Flexibility

Problem

- Some companies would like to be able to consolidate wastes from multiple VSQG (CESQG) sites for more efficient shipping and hazardous waste management
 - Reduce liability for company as a whole to ensure proper management of hazardous waste
 - Sending to a RCRA-designated facility is the most environmentally sound option
 - Formerly an LQG needed a RCRA permit to receive CESQG wastes

Clarification

In this final rule, EPA outlines in regulatory language the distinction between independent requirements for all generators and conditions for exemption from the storage facility regulations for generators who are accumulating hazardous waste on site

- This distinction has always existed in RCRA and it has been the Agency's position that generators not complying with a condition of a generator exemption would be considered an operator of a non-exempt storage facility
- State regulatory agencies will continue to retain discretion and authority regarding bringing enforcement actions when non-compliance with conditions for exemptions have been detected
- EPA and states have always had, and continue to have, enforcement discretion to bring charges and seek penalties that accurately reflect the seriousness of the violations and their potential for harm

VSQG Waste Consolidation

Enhancing Generator Flexibility

Solution § 262.17(f)

- Consolidate waste at an LQG under the control of the same person:
 - Person – as defined under RCRA
 - Control – power to direct policies at the facility

VSQG

- Label containers with “Hazardous Waste” and indication of the hazard

LQG

- Notifies agency on Site ID Form that it is participating in this activity and identifies which VSQGs are participating
- Recordkeeping for each shipment
- Manages consolidated waste as LQG hazardous waste including appropriate disposal
- Reporting in Biennial Report

Episodic Generation

Enhancing Generator Flexibility

Problem

- Former RCRA rules lacked flexibility to address an “episodic” change in a generator’s regulatory category:
 - Planned event (i.e., periodic maintenance such as tank cleanouts)
 - Unplanned event (i.e., production upset conditions, spill, acts of nature)
- Generators must comply with more comprehensive set of regulations for short period of time when they are not regular generators of higher levels of hazardous waste

Episodic Generation

Enhancing Generator Flexibility

Solution §§ 262.230-234

- Allows generators to maintain their existing category provided they comply with streamlined set of requirements
 - Once per calendar year with ability to petition for second event (One planned and one unplanned)
 - Notify agency 30 days prior to initiating a planned episodic event
 - Notify within 72 hours after unplanned event begins
- Conclude the event within 60 days including shipping episodic waste off-site;

Episodic Generation

Enhancing Generator Flexibility

- Streamlined Requirements for VSQGs:
 - Obtain RCRA identification number
 - Use hazardous waste manifest and transporter to send episodic waste to RCRA-designated facility (TSDF or recycler)
 - Manage the episodic hazardous waste in a manner that minimizes the possibility of an accident or release
 - Label episodic waste containers with “episodic hazardous waste,” indication of the hazards, and date event began
 - Identify an emergency coordinator
 - Maintain records associated with episodic event
- SQGs need only comply with existing SQG regulations and maintain records associated with the episodic event

Emergency Preparedness and Planning

Strengthening Environmental Protection

Contingency Plan Quick Reference Guide

Problem

- The contingency plans LQGs are required to submit to local emergency responders are lengthy
- At the moment of an emergency, responders want quick access to the most important information in the plan

Solution § 262.262(b)

- Requires new LQGs submitting plans and existing LQGs updating plans to include a “quick reference guide” that has the most critical information for immediate response to an event
- Responsive to Executive Order 13650 on Chemical Facility Safety and Security

Emergency Preparedness and Planning

Strengthening Environmental Protection

Contingency Plan Quick Reference Guide Contents

- 1. Types/names of hazardous waste and associated hazards
- 2. Estimated amount of each HW that may be present
- 3. ID any HW exposure requiring special medical treatment
- 4. Site map showing generation, treatment, and accumulation areas
- 5. Maps of surrounding area for access and evacuation
- 6. Location of water supply
- 7. ID on-site notification systems (alarms, phones, PA system)
- 8. Name of emergency coordinator and phone number

Emergency Preparedness and Planning

Strengthening Environmental Protection

Making and Documenting Arrangements with Local Emergency Responders

Problem

- Former regulations required generators to attempt to make arrangements with local emergency responders regarding the materials stored on site to prepare for a potential emergency
- There was no requirement to document that the arrangements have been made (except declination by local authority)

Solution § 262.256

- Generators must document that they have attempted to make arrangements with emergency responders
- No specific form or type of documentation required
- Facilities with on-site response capabilities can receive a waiver

Preparedness and Planning

Generator Flexibility, Clarifying Regulations

- Updates regulatory language to refer to Local Emergency Planning Committees as alternative
- Generators are not required to make arrangements with appropriate local authorities (as proposed) and need only attempt to make arrangements
- Clarifies that the scope of the contingency planning and emergency procedures applies to hazardous waste central accumulation areas, the HW point of generation, satellite accumulation areas, and areas of allowable treatment.
- Remove requirement for personal information in records
- Revise regulations on placement of equipment to update for modern technology (e.g., cell phones)
- Clarify that contractors can cleanup releases

Hazardous Waste Determinations

Clarifying Regulations

- Confirms that a generator's waste must be classified at its point of generation and at any time during the course of management for wastes potentially exhibiting a hazardous characteristic,
- Explains more fully how generators can use generator knowledge and test to make determinations
- Explains more completely in the regulations in § 262.11 how a generator should evaluate its waste for hazardous characteristics
- Solid and hazardous waste determinations must be accurate
- Copied waste determination recordkeeping requirements from § 262.40 (c) into §262.11

Labeling

Strengthening Environmental Protection

Problem

- Former RCRA labeling regulations did not require generators to state the hazards of hazardous wastes accumulated in containers, tanks, drip pads and containment buildings
- Failure in risk communication
- Could have affected workers, waste handlers, emergency responders and visitors
- Relevant areas on site: satellite accumulation areas, central accumulation areas, and at transfer facilities consolidating hazardous wastes from different generators

Labeling

Strengthening Environmental Protection

Solution §§ 262.15(a)(5)(ii), 16(b)(6), 17(a)(5)(i)(B)

- Container and tank labels must indicate the hazards of the contents of the containers
- Flexibility in how to comply with this new provision; can indicate the hazards of the contents of the container using any of several established methods (e.g., DOT hazard communication, OSHA hazard statement or pictogram, NFPA chemical hazard label, or RCRA characteristic)
- Drip pads, and containment buildings can keep this information in logs or records kept near the accumulation site

Marking and Labeling

Strengthening Environmental Protection

Problem

- Generators do not always identify the specific RCRA waste codes associated with the hazardous wastes in a container
- As a result, receiving TSDFs may not know how to treat the wastes to meet land disposal restriction requirements

Final Rule § 262.11(g)

- Prior to sending hazardous waste off-site to a TSDF, generators must mark their containers with the applicable RCRA waste codes or use a bar-coding system that performs the same function

Reporting

Strengthening Environmental Protection

Re-notification by SQGs

Problem

- EPA and most states have outdated and inaccurate databases of SQG universe information because there is no requirement to notify after the initial notification
- This makes it difficult to make programmatic decisions, plan or execute inspections as effectively

Solution § 262.18(d)

- Requires SQGs to re-notify every 4 years staggered from biennial reporting beginning 2021 (more often by state regulations)
- Electronic reporting will be an option
- Compliance date is delayed to 2021

Reporting

Clarifying Regulations, Strengthening Environmental Protection

Biennial Report (BR)

Problem

- Universe of facilities and what hazardous waste must be reported is unclear
 - Inconsistency between data elements found in BR regulations vs. the instructions for completing BR
 - Inconsistency between what's been stated in the Federal Register vs. BR instructions as to what wastes to report
 - Facilities not storing prior to recycling previously were not required to report

Reporting

Clarifying Regulations, Strengthening Environmental Protection

Final Rule: Biennial Report (BR) Clarifications Consistent with Existing BR Guidance

- Regulations will not list specific data elements to be reported, but instead refer generators directly to the form instructions
- LQGs must report all hazardous waste generated in a calendar year, even when it is managed the next calendar year
- LQGs must report hazardous wastes generated throughout the calendar year, even for months when they are an SQG

Closing Regulatory Gap

- Recycling facilities that do not have a RCRA permit because they don't store must report wastes being recycled

Satellite Accumulation Areas

Strengthening Environmental Protection, Enhancing Generator Flexibility, Clarifying Regulations

- Requires that hazardous wastes not be mixed or placed in a container with other hazardous wastes that are incompatible
- Allows containers to remain open under limited circumstances, when necessary for safe operations
- Provides maximum weight in addition to volume for acute hazardous waste limit
- Clarifies that “three days” means three calendar days
- Explains that when maximum weight or volume is exceeded, waste must be moved to a central accumulation area or a TSDF or be managed in-place as a central accumulation area
- Rescinded memo allowing reactive hazardous waste to be stored away from the point of generation
- Made marking and labeling requirements consistent with central accumulation areas

Waiver to 50-Foot Requirement

Enhancing Generator Flexibility

Problem

- The generator regulations require that containers holding ignitable or reactive waste had to be located at least 15 m (50 feet) from the facility's property line, but meeting this requirement can be impossible, especially in urban areas where properties are less than 100 feet wide.

Solution § 262.17(a)(1)(vi)(A)

- Allows the generators to approach the “authority having jurisdiction over the fire code” to apply for a waiver from the requirement if the authority believes that the precautions taken by the facility make the waiver appropriate and safe.

Closure

Strengthening Environmental Protection

Problem

- Existing closure regulations for LQGs accumulating hazardous wastes in tanks, drip pads, and containment buildings require closure of facility as a landfill should it fail to clean close. LQGs accumulating in containers do not have this requirement.
- Numerous documented cases exist where LQGs accumulating in containers abandoned their facilities only to require Superfund removal action, sometimes costing millions of dollars to cleanup
- The Agency and states are not notified when a facility closes

Closure

Strengthening Environmental Protection

Solution § 262.17(a)(8)

- Require closure as a landfill when LQGs accumulating in containers fail to clean close
- LQG may choose to close accumulation area when ceasing accumulation or wait until facility closes
- Agency notification required within 90 days after closure of the facility
- When ceasing use of an accumulation area, a notice must be placed in operating record no later than 30 days prior so closure can occur during facility closure

Drip Pads and Containment Buildings

Problem

- Drip pads and containment building regulations only addressed LQGs and TSDFs – not SQGs accumulating hazardous wastes
- Therefore, it was not apparent that SQGs must comply with LQG regulations when generating SQG quantities of hazardous wastes monthly

Final Rule

- Clarifies that SQGs may accumulate hazardous waste on drip pads and in containment buildings, provided they:
 - Meet the standards found in Part 265, subparts W and DD, for drip pads and containment buildings, respectively
 - Meet all of the conditions specified in § 262.16 for SQGs accumulating hazardous wastes in these units

Clarifying Generator Regulations

Problem

- The regulations that describe how to determine generator categories cause recurring questions.

Solution §§ 260.10, 262.13

- Clarify the regulations in a number of areas:
 - Determining generator category when generating acute and non-acute hazardous waste in the same month
 - Determining generator category when mixing solid and hazardous waste
 - Explaining procedures for making hazardous waste determinations and counting hazardous waste

Additional Clarifications and Other Revisions

Clarifying Regulations

- Defined new terms in § 260.10, including acute and non-acute hazardous wastes, VSQG, SQG (previously defined incorrectly), and LQG
- Clarified that RCRA § 3004 (c), which prohibits the disposal of bulk or non-containerized liquid hazardous waste or free liquids contained in hazardous waste in any landfill, also applies to hazardous waste generators.
- Deleted obsolete provisions; e.g. Project XL previously found at Part 262, subpart J and several Performance Track provisions
- Made technical corrections throughout generator regulatory program, such as slightly modifying the definitions of “Treatability Study,” “Universal Waste Handler,” “Universal Waste Transporter” in § 260.10; improving the readability of § 261.4(a)(7), etc.

Other Revisions

Clarifying Regulations

- Clarifying requirements for SQGs accumulating hazardous waste on drip pads and in containment buildings
- Defining terms not currently defined
- Deleting obsolete provisions
- Conforming changes
- Technical corrections

Major Impacts of Final Rule by Generator Category

New Provision	VSQG	SQG	LQG
LQG Consolidation of VSQG wastes	X		X
Episodic Generation	X	X	
50-foot Waiver			X
Marking & Labeling		X	X
Marking RCRA Waste Codes		X	X
SQG Re-notification		X	
Contingency Plan Quick Reference Guide			X
Closure Notification			X
Closure as Landfill if Can't Clean Close			X
BR Reporting by Recyclers Who Don't Store*		X	X

Stringency of Final Rule

- **More stringent:**

- SQG re-notification
- Identifying hazards of wastes being accumulated & labeling
- Notification of closure
- Closure as a landfill for LQGs accumulating hazardous wastes in containers that cannot meet closure performance standards
- Biennial reporting for whole year, not just months the generator was an LQG
- Biennial reporting for recyclers who don't store prior to recycling
- Quick Reference guide for contingency plans

- **Less stringent:**

- VSQG consolidation
- Episodic generation
- Waiver from 50-foot rule

Bottom Line:

- The final rule represents a much-needed update of the hazardous waste generator regulatory program
- The Agency is:
 - Finalizing approximately 60 changes to the regulations – some small, some big
 - Revisions and clarifications affect practically every component of the generator regulatory program
 - In addition, finalizing ~30 additional technical corrections to the program

Questions?

<https://www.epa.gov/hwgenerators/final-rule-hazardous-waste-generator-improvements>

Ed Buckner
Waste Enforcement and Materials Management Branch
EPA Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219
913-551-7621
buckner.edwin@epa.gov

Somewhere in Kansas